

D/F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

FRANK OLIVARES,

Defendant.

X

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X

96 CR 30 (ARR)

NOT FOR
PUBLICATION

OPINION
AND ORDER

ROSS, United States District Judge:

The defendant Frank Olivares ("Mr. Olivares" or "defendant") filed a motion in this court on March 21, 2005, seeking to reduce his sentence. By order dated April 8, 2005, this court denied his motion. The defendant filed his notice of appeal and request for a certificate of appealability on May 4, 2005. By order dated October 7, 2005, the Second Circuit sua sponte dismissed the appeal as untimely, as defendant failed to submit his notice of appeal within the ten-day limit under Rule 4(b)(1) of the Federal Rules of Appellate Procedure. However, the Second Circuit directed this court to construe the notice of appeal as a motion for an extension of time. Under Rule 4(b)(4), this court may—"[u]pon a finding of excusable neglect or good cause"—grant the defendant an extension of time to file his notice of appeal. In order to make such a finding, the court orders the defendant to submit an explanation for his failure to submit a timely notice of appeal by October 31, 2005.

SO ORDERED.

Allyne R. Ross
United States District Judge

Dated: October 17, 2005
Brooklyn, New York